



November 10, 2016

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Via Electronic Filing
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

EX PARTE LETTER RE: WC Docket No. 05-25, RM-10593

Dear Secretary Dortch:

On November 10, 2016, Sheba Chacko, Head of Americas Regulation, BT Americas Inc. ("BT") e-mailed the proposal below to Howard Symons, General Counsel, FCC:

The Commission should use concepts from price cap regulation to set a presumption for what would be considered just and reasonable rates in a complaint proceeding. Specifically, the Commission should require carriers filing price caps for TDM services to also file proof with the Commission that the weighted average of their posted Ethernet service rates 50 Mbps and under – each carrier's Actual Price Index (API) – is below a Price Guideline Index (PGI) set by the Commission. Carriers would not file tariffs for their Ethernet services 50 Mbps and under, tariff rules would not apply to Ethernet services 50 Mbps and under, and hence this mechanism would not entail price cap regulation. However, in a complaint proceeding, if a complainant could show that the API exceeded the PGI for the Ethernet services at issue, then there would be a presumption that these Ethernet prices charged by the seller were unjust and unreasonable. Such a remedy would not require reversal of Ethernet forbearance from dominant carrier regulation. The Commission could adopt a rule to this effect and delegate to the Bureau to implement it.

The PGI would be set based on a weighted average of ILEC prices for PBDS at or below 50 Mbps ("Low-Bandwidth PBDS"). In order to establish the weighted average, each ILEC would need [to] set the prices and volumes attributed to the services. First, to establish the current prices, the ILECs would file with the Commission either the prices they charge their five largest wholesale and their five largest retail customers as of October 1, 2016 or the weighted average of all of their actual prices as of October 1, 2016 (each ILEC would choose which approach it prefers). The current prices would then be reduced by 19.7% (which was the average amount by which ILECs reduced the prices of their BDS services in response to competition).[i] Second, the volume of each service would be set based on the volume sold by the ILEC in the prior 12 months. The prices and volumes would then be used to establish an index, i.e., the price guideline index. Each ILEC would be required to post on its website prices for Low-Bandwidth PBDS and a calculation assessing the extent to which the weighted average of those prices is equal to or below the PGI. If the weighted average of ILEC's prices for above the PGI, the ILEC would bear the burden of proof where the lawfulness of any of those prices is challenged. Going forward, the Commission would apply the same annual X factor to the PGI that it applies to the PCI for TDM services.

BT AMERICAS INC.

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This improvement to the complaint process that the Commission would make for Low-Bandwidth PBDS would be in addition to other improvements to the complaint process contained in the order which collectively would make it easier for purchasers to prove that Ethernet-based BDS rates are unjust and unreasonable. However, such improvements to the complaint process would not foreclose ex ante regulation of Ethernet-based BDS which market the Commission would continue to study by gathering data at regular intervals and analyzing such data.

On November 9, 2016, Sheba Chacko, Head of Americas Regulation, BT Americas Inc. ("BT") e-mailed to Travis Litman, legal advisor to Commissioner Rosenworcel the attached ex partes.

On November 8, 2016, Gavin Patterson, CEO of BT, called Chairman Wheeler via phone to thank him for moving forward on BDS reform and to urge him to strengthen enforcement mechanisms in the BDS order particularly in light of consolidation in the market. The improvements Mr. Patterson proposed were a high level summary of the proposal described above.

If you have any questions regarding any matters discussed herein please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "SChacko", with a stylized, cursive script.

Sheba Chacko
Senior Counsel and Head, Americas Regulation and Global
Telecoms Policy

cc:
Howard Symons
Lisa Hone
Travis Litman
Claude Aiken
Matt Del Nero